



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR95-1326

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35080.

The County of Travis (the "county") received an open records request for documents related to fourteen claims filed against the county. You state that much of the requested information has been released to the requestor. You contend, however, that portions of the requested information may be withheld from required public disclosure pursuant to sections 552.101 and 552.103(a) of the Government Code. You have submitted for our review the documents at issue.

You contend that some of the documents are medical records that are excepted from required disclosure by section 552.101 of the Government Code in conjunction with the Medical Practice Act ("MPA"), V.T.C.S. article 4495b. Section 5.08(b) of the MPA provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Access to medical records is governed by the MPA rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991) at 1; *see* Open Records Decision No. 565 (1990) (release of medical records). When access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. You may release the records created or maintained by a physician only as provided under the MPA.

We note that some of the information you have submitted as medical records includes billing information that is not prepared or maintained by a physician. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision No. 343 (1982) at 1. The remaining information is not subject to section 5.08 of the MPA and may not be withheld from the requestor.

You have submitted for our review two customer receipts for prescriptions identified as exhibit B, that you contend are excepted from required public disclosure pursuant to section 552.118 of the Government Code. Additionally, you contend that the information in exhibit B is excepted from required public disclosure pursuant to section 552.101 under the Texas Pharmacy Act, article 4542a-1, section 40C of the Texas Civil Statutes. For purposes of the Texas Pharmacy Act, a "confidential record" is defined as "any health-related record maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order." V.T.C.S. art. 4542a-1, § 5(13). Release of confidential records under the Pharmacy Act, is governed by article 4542-1a, section 40C. When access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. Consequently, if the prescriptions mentioned on the customer receipts are within the article 4542a-1, section 5(13) definition then you may release the information in exhibit B only in accordance with the Texas Pharmacy Act.

If the prescriptions are for a controlled substance requiring a triplicate prescription form filed with the Department of Public Safety under section 481.075 of the Health and Safety Code, then they are excepted from required public disclosure pursuant to section 552.118 of the Government Code. Additionally, common-law privacy may prevent disclosure of information about prescription drugs. *See, e.g.,* Open Records Decision No. 455 (1987) at 5.

You have submitted for our review chiropractic medical records that you contend are excepted from required public disclosure by section 552.101 of the Government Code in conjunction with article 4512b, section 1b(b). Section 1b(b) provides that "records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided in this section." Article 4512b, section 1b(c) provides for a special right of access to these records. This provision also requires that anyone receiving confidential chiropractic records may not disclose the information except to the persons listed in subsection (h). The disclosure also must be consistent with the authorized purposes for which the information was first obtained. Consequently, access to chiropractic medical record information obtained by the county is governed by article 4512b, section 1b(c) rather than by chapter 552 of the Government Code. *See, e.g.,* Open

Records Decision No. 565 (1990) (release of medical records). As we have previously stated, when access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. The chiropractic medical record information may be released only as provided under article 4512b, section 1b(c).

You have submitted as exhibit D health care claim forms that you contend are excepted from required disclosure by section 552.101 in conjunction with article 21.58A of the Insurance Code. Article 21.58A, section 8, provides for the confidentiality of some of the information found on the insurance claim forms. Additionally, section 8 provides special conditions for disclosure of some of the information on the claim forms. Consequently, because disclosure is governed by article 21.58A, section 8, this information may be disclosed only as provided under article 21.58A of the Insurance Code.

You assert that an automobile accident report is excepted from required disclosure by section 552.101 of the Government Code in conjunction with recently enacted House Bill 391.¹ Since a requestor's right of access to information must be construed as of the time the request was made, we apply the law in effect at the time the request was made. *See* Open Records Decision No. 530 (1989). Therefore, you must release the report to the requestor.

You have submitted as Exhibit F information that you contend is excepted from required disclosure by section 552.103 of the Government Code. You state that at this time the county is negotiating with the individual claimants regarding their respective claims. You state that the information in exhibit F is related to the settlement negotiations to which the county is a party. You also inform us that attorneys for the county have determined this information should be withheld from required public disclosure since there exist ongoing settlement negotiations.

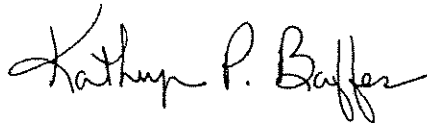
In this instance you have made the requisite showing that the requested information relates to pending settlement negotiations for purposes of section 552.103(a). However, it appears that the opposing party has had access to some the records at issue. Once information has been obtained by all parties, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

¹House Bill 391 will be codified as an amendment to Texas Revised Civil Statutes article 6701d, section 47. It becomes effective September 1, 1995, and makes automobile accident reports confidential while providing for a special right of access to specified persons.

Consequently, information seen by all parties to the settlement negotiations must be released to the requestor.² We also note that the applicability of section 552.103(a) ends once a settlement has been reached. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). You may withhold the information that the opposing party has not seen pursuant to section 552.103(a).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RHS/rho

Ref: ID# 35080

Enclosures: Submitted documents

cc: Ms. Bettie Cross
Reporter
KVUE-TV, Inc.
P.O. Box 9927
Austin, Texas 78766-0927
(w/o enclosures)

²We note that included among the documents in exhibit F are medical records. We note that release of these documents is governed by the MPA, V.T.C.S. article 4595b, rather than by chapter 552 of the Government Code.